

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Arthur McDarn Williams, #193920,

Petitioner,

v.

Anthony J. Padula, Warden; and Henry
McMaster, Attorney General for South
Carolina,

Respondents.

C/A No. 0:05-1430-GRA-BM

ORDER

[Written Opinion]

This matter is before the Court for review of the magistrate's Report and Recommendation filed May 25, 2005 made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(c), D.S.C. Petitioner brings this suit pursuant to 28 U.S.C. § 2254. The magistrate recommended that the case be dismissed without prejudice because petitioner's suit does not meet the successive petition requirements of the Antiterrorism and Effective Death Penalty Act ("AEDPA"). For the following reasons, this Court accepts the recommendation of the magistrate and holds that the petitioner's action pursuant to 28 U.S.C. § 2254 is DISMISSED.

Petitioner brings this motion *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. See *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir.), *cert. denied*, 439 U.S. 970 (1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. See *Cruz v. Beto*, 405 U.S. 319 (1972).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the Court may accept, reject or modify, in whole or in part, the recommendation of the magistrate, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. See *Camby v. Davis*, 718 F.2d 198 (4th. Cir. 1983).

Petitioner filed a motion to withdraw the petition without prejudice on June 6, 2005. That motion is moot because petitioner has not filed any objections to the Report and Recommendation and this Court, after a review of the magistrate's report, finds the report is based upon the proper law. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

IT IS THEREFORE ORDERED that this action be DISMISSED without prejudice and without issuance and service of process upon the respondents.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

June 28, 2005

NOTICE OF RIGHT TO APPEAL

Petitioner has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.